UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD TEJEDOR PLAINTIFF

V. CIVIL ACTION NO. 1:05cv679-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY DEFENDANT

ORDER

This order addresses Defendant's [30] Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment as to Fiduciary Duty and Extra-Contractual/Punitive Damages. Plaintiff in his [45] response does not oppose partial summary judgment being entered on the fiduciary duty and misrepresentation claims. While the focus of the opposing parties and their counsel is on whether punitive damages may be appropriate, the pleadings and motion documents raise other questions that the Court deems necessary to be answered.

At its core, Plaintiff's cause of action is based on an alleged breach of contract. The Complaint does not even contain separate counts. The only document attached to the Complaint is a letter to Plaintiff from one of Defendant's representatives (dated October 6, 2005) denying benefits based on an investigation showing that the damage sustained during Hurricane Katrina was the result of storm surge, wave wash, and flood not covered by the policy; however, there is a footnote in Defendant's Notice of Removal which reads: "The alleged 'denial' under her [sic] State Farm policy is, in fact, no denial as Plaintiff's own Exhibit 'A,' to his Complaint reflects an estimate of damages and tender by State Farm to the Plaintiff in the amount of $13,943.65 in covered damages." No other reference is made in the record (including Exhibit "A" to the Complaint) with respect to this assertion. Defendant's [2] Answer to the Complaint admits that Plaintiff's home was damaged, but reserves the right to contest the extent. It also affirmatively pleads that some of Plaintiff's claims "are either not covered or excluded from coverage under any applicable State Farm policy."

Attached to Defendant's [30] motion is a copy of a State Farm homeowners policy , but not the one issued specifically to Plaintiff. This attachment does not disclose the policy limits. From a reading of Plaintiff's deposition, it also appears that he received $200,000 in flood limits for his residence and $80,000 on contents from a flood policy issued by Farm Bureau. This was a policy procured by Plaintiff on his own, although his dwelling was not in a flood zone. Also relevant in this regard is that it is Plaintiff's recollection that his property (with a dwelling on it) was appraised at a value of $280,000–285,000 prior to the storm. The Plaintiff's residence apparently was reduced to a slab by the storm, although it takes a lot of reading to reach that conclusion.

The tension in the record is between the damages sustained by Plaintiff and the manner in which his claim was handled by Defendant. A paragraph in the Complaint avers that "Plaintiff

has suffered damages equal to the benefits due under the terms of the insurance policy." This begs the question of what contractual damages Plaintiff is claiming. His expert's opinion is that "the Tejedor residence was either destroyed by the winds of Katrina prior to the advent of the storm surge or damaged first by the winds of Katrina and later by the combined forces of both the wind and the storm surge." Further, "the winds' contribution to the destruction of the Tejedor residence would have been greater than that of the storm surge alone. There is not a position that denies contribution to the destruction of the Tejedor residence by the winds associated with the subject storm." Yet this does not explain the recovery of flood policy benefits vis-a-vis Plaintiff's claim that his loss is at least attributable in part (if not totally) to wind.

The Court uses this occasion to rule that the Plaintiff's actual loss is the maximum recovery he may receive from all applicable policies of insurance for both his dwelling and personal property. Insurance contracts insure only against covered losses, and it is a basic proposition that "[i]nsurance law is based on the principle of indemnification and is aimed at reimbursement. The benefit derived from insurance should be no greater in value than the loss." *Estate of Murrell v. Quin*, 454 So.2d 437, 444 (Miss. 1984)(Prather, J., dissenting)(general discussion in case dealing with insurable interests; citations omitted). These well-established principles of indemnity and insurable interests apply to all insurance claims under policies that are not "valued policies." *See, e.g.,* Miss. Code Ann. § 83-13-5. *Cf. Chauvin v. State Farm Fire and Casualty Co.*, 2006 WL 2228946 (E.D. La. 2006); *State Farm Fire & Casualty Co.*, 888 S.W.2d 150 (Tex. App. 1994).

Thus, if, as the Plaintiff has testified, the pre-storm appraised value of his residence was $280,000–285,000 and the Plaintiff has collected $200,000 in insurance proceeds under his flood policy, his maximum loss is measured by the difference between the pre-storm value and the insurance benefits he has collected to compensate him for the loss of his dwelling, i.e. $80,000–85,000. Again, the following assumptions are made: that the property was a total loss due to the effects of wind and water during the storm; that Plaintiff has collected $200,000 in flood insurance coverage applicable to his dwelling; and that the actual amount of the loss is $280,000–285,000. These same indemnity principles would govern the maximum amount the Plaintiff may recover for the loss or destruction of his personal property during the storm. The Plaintiff's loss attributable to damage or destruction of his personal property would be the difference between the value of that property before the storm and the amount of indemnity for the loss of personal property the Plaintiff has received, if any, from his flood insurance coverage.

These principles apply only to the Plaintiff's claim for actual damages under the insurance contract he purchased from Defendant. If he can prove a case for punitive damages or for extra-contractual damages, these limits would not apply to those aspects of his case. As to the handling of the claim, Plaintiff relies in part on a Wind/Water Protocol adopted by Defendant shortly following Katrina. Another of Plaintiff's primary charges is that Defendant failed to obtain an engineer in assessing the cause of his damages prior to denying his claim. Defendant admits that it did not retain an engineer in the claim, but has submitted the reports (dated well after the hurricane and the filing of suit) of two engineers connecting the structural failure (wall collapse) of Plaintiff's home with the high probability of storm surge and waves rather than wind (Plaintiff's own expert's report is dated April 11, 2006, and was purportedly taken into account

by Defendant's experts). If anything, according to Defendant's position in support of its motion, wind contributed to minor roof cover (shingle) loss. Whether and when Defendant actually tendered a sum for any benefits under the policy (which did not have a wind exclusion endorsement) is unclear and worthy of factual development.

To the extent that Plaintiff confesses that partial summary judgment is appropriate on two theories of recovery, it will be granted. Otherwise, the Court is not in a position to rule in a fully informed manner on the remaining part of Defendant's motion.

Accordingly, **IT IS ORDERED**:

Defendant's Motion for Partial Summary Judgment as to any claims made by Plaintiff based on breach of a fiduciary duty and misrepresentations in the procurement of the subject insurance policy is **GRANTED**.

The Court reserves a ruling on Defendant's Motion for Partial Summary Judgment on the issue of extra-contractual and punitive damages.

SO ORDERED this the 6th day of November, 2006.

s/ *L. T. Senter, Jr.*
L. T. Senter, Jr.
Senior Judge